

FOREIGN CLAIMS SETTLEMENT COMMISSION
OF THE UNITED STATES
WASHINGTON, D.C. 20579

IN THE MATTER OF THE CLAIM OF

LEONOR WHITMARSH AIZCORBE

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU -0555

Decision No. CU 4638

PROPOSED DECISION

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, in the amended amount of \$51,150.00, was presented by LEONOR WHITMARSH AIZCORBE based upon the asserted loss of certain real and personal property in Cuba, including rental income. Claimant has been a national of the United States since birth.

Under Title V of the International Claims Settlement Act of 1949 [78 Stat. 1110 (1964), 22 U.S.C. §§1643-1643k (1964), as amended, 79 Stat. 988 (1965)], the Commission is given jurisdiction over claims of nationals of the United States against the Government of Cuba. Section 503(a) of the Act provides that the Commission shall receive and determine in accordance with applicable substantive law, including international law, the amount and validity of claims by nationals of the United States against the Government of Cuba arising since January 1, 1959 for

losses resulting from the nationalization, expropriation, intervention or other taking of, or special measures directed against, property including any rights or interests therein owned wholly or partially, directly or indirectly at the time by nationals of the United States.

Section 502(3) of the Act provides:

The term 'property' means any property, right, or interest including any leasehold interest, and debts owed by the Government of Cuba or by enterprises which have been nationalized, expropriated,

intervened, or taken by the Government of Cuba and debts which are a charge on property which has been nationalized, expropriated, intervened, or taken by the Government of Cuba.

Claimant has asserted the following losses:

Apartment house	\$75,000.00	
Lot	<u>20,000.00</u>	
	\$95,000.00	
Less mortgage	<u>15,000.00</u>	
	\$80,000.00	
One-half interest		\$ 40,000.00
Personal Property in apartment house - Claimant's interest		6,650.00
Land at Cruz Blanca (full interest)		4,500.00
Rental income from apartment house		(amount not stated)
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Total		\$ 51,150.00
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Apartment House and Lot

The evidence establishes and the Commission finds that claimant and her husband, a nonnational of the United States, each owned a one-half interest in an apartment house and lot at 4403-4405 Avenida 1-A, Miramar, Marianao, Cuba.

The Commission finds that said property was within the purview of the Urban Reform Law, published in the Cuban Official Gazette on October 14, 1960. In the absence of evidence to the contrary, the Commission finds that the property was taken by the Government of Cuba on October 14, 1960. (See Claim of Henry Lewis Slade, Claim No. CU-0183, 1967 FCSC Ann. Rep. 39.)

The record includes a report from abroad which establishes that claimant and her husband acquired the property on October 22, 1957 for \$50,000.00, subject to a mortgage in the amount of \$15,000.00. Claimant has submitted photographs of the property and an affidavit, dated January 28, 1966, from an architect who supervised the construction of the building. The affidavit includes a description of the building, indicating that it was 4 stories

high, had 2 apartments on each floor, a garage for 5 automobiles and living quarters for a caretaker in the basement. In the opinion of the architect, the land and building had an aggregate value of \$95,000.00 on the date of loss.

In determining the value of the property on October 14, 1960, the Commission considered the entire record, including the statements of the architect and the values of similar properties in Miramar, Cuba. Upon consideration thereof the Commission finds that the fair and reasonable value of the apartment house and lot on October 14, 1960, the date of loss, was \$80,000.00, and that the equity owned by claimant and her husband had a value of \$65,000.00, after deduction for the outstanding mortgage of \$15,000.00. Therefore, claimant's one-half interest in the property had a value of \$32,500.00.

Personal Property

The Commission finds on the basis of the evidence of record that claimant and her husband jointly owned certain furniture and furnishings maintained in one of the apartments in the building at Miramar where they resided. The apartment also contained claimant's clothing, as well as certain paintings and objects which she had inherited.

The Commission finds that all of the personal property in said apartment was taken by the Government of Cuba on October 14, 1960 when the building was taken.

Claimant has submitted a detailed list of the items of personal property herein. With the exception of the clothing and the inherited items, practically all of the personal property in the apartment was acquired in May 1957. The Commission finds that all of the property, except the inherited items, was subject to depreciation. On the basis of the entire record, the Commission finds that on October 14, 1960, the date of loss, claimant's one-half interest in the furniture and furnishings had a value of \$3,353.80; that her clothing had a value of \$329.00; and that her inherited items of property had a value of \$2,250.00. Accordingly, the aggregate value of claimant's personal property was \$5,932.80.

Land

Claimant asserts the loss of a parcel of land at Cruz Blanca, Cuba. She states that she purchased this property in 1950 with funds inherited from her mother.

The record, however, contains neither a report from abroad nor any other evidence to corroborate claimant's assertions. In claimant's letter of February 10, 1970, she stated that she has been unable to obtain any further information concerning the land.

The Regulations of the Commission provide:

The claimant shall be the moving party and shall have the burden of proof on all issues involved in the determination of his claim. (FCSC Reg., 45 C.F.R. §531.6(d) (Supp. 1967).)

The Commission finds that claimant has failed to meet the burden of proof with respect to the portion of her claim for the loss of land at Cruz Blanca, Cuba. Accordingly, this portion of the claim is denied.

Rental Income

A portion of the claim is based upon the asserted loss of rental income from the apartment house for the period October 1960 to the date of settlement of this claim. Inasmuch as the property was taken by Cuba on October 14, 1960, all rental income accruing thereafter belonged to Cuba. There is no evidence to establish that Cuba took any rental income belonging to claimant. Accordingly, this portion of the claim is denied.

Recapitulation

Claimant's losses sustained on October 14, 1960 within the meaning of Title V of the Act are summarized as follows:

<u>Item of Property</u>	<u>Amount</u>
Apartment house and lot	\$ 32,500.00
Personal property	<u>5,932.80</u>
Total	<u>\$ 38,432.80</u>

The Commission has decided that in certification of losses on claims determined pursuant to Title V of the International Claims Settlement Act


of 1949, as amended, interest should be included at the rate of 6% per annum from the date of loss to the date of settlement (see Claim of Lisle Corporation, Claim No. CU-0644), and in the instant case it is so ordered.

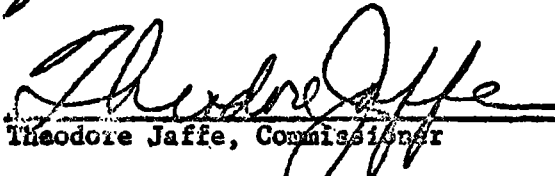
CERTIFICATION OF LOSS


The Commission certifies that LEONOR WHITMARSH AIZCORBE suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Thirty-eight Thousand Four Hundred Thirty-two Dollars and Eighty Cents (\$38,432.80) with interest at 6% per annum from October 14, 1960 to the date of settlement.

Dated at Washington, D. C.,
and entered as the Proposed
Decision of the Commission

18 MAR 1970


Lyle S. Garlock, Chairman


Theodore Jaffe, Commissioner


Sidney Freidberg, Commissioner

The statute does not provide for the payment of claims against the Government of Cuba. Provision is only made for the determination by the Commission of the validity and amounts of such claims. Section 501 of the statute specifically precludes any authorization for appropriations for payment of these claims. The Commission is required to certify its findings to the Secretary of State for possible use in future negotiations with the Government of Cuba.

NOTICE: Pursuant to the Regulations of the Commission, if no objections are filed within 15 days after service or receipt of notice of this Proposed Decision, the decision will be entered as the Final Decision of the Commission upon the expiration of 30 days after such service or receipt of notice, unless the Commission otherwise orders. (FCSC Reg., 45 C.F.R. 531.5(e) and (g), as amended, 32 Fed. Reg. 412-13 (1967).)

CU-0555